existence of which in its natural state is necessary for the support of my land. That is my neighbor for that purpose; as long as that land remains in its natural state, and it supports my land, I have no right beyond it, and therefore it seems to me that that is my neighbor for this purpose. There might be land of so solid a character, consisting of solid stone, that a foot of it would be enough to support the land. There might be other land so friable, and of such an unsolid character, that you would want a quarter of a mile of it; but, whatever it is, as long as you have got enough land on your boundary, which left untouched, will support your land, you have got your neighbor, and you have got your neighbor's land to whose support you are entitled. Beyond that, it would appear to me that you have no rights." It appearing, however, that in this particular case the intervening strip would have afforded, if left in its natural state, a sufficient support to the plaintiff's land, the court said: "The plaintiffs have no right as against the landowners on the other side of that intervening space, and they acquire no right, whatever the owner of the intervening land may have done. If the act of the intervening owner has been such as to take away the support to which the first landowner who complains is entitled, then, for whatever damage occurs from the act which he has done, the first owner may have an action; but an action against the *intervening owner*, not an action against the owner on the other side; and it appears to me that it would be really a most extraordinary result that the man upon whom no responsibility whatever originally rested, who was under no liability whatever to support the plaintiff's land, should have that liability thrown upon him without any default of his own, without any misconduct or any misfeasance on his part. I cannot believe that any such law exists, or ever will exist."

The Court of Appeals sustained the decision of the Master of the Rolls; BRETT, L. J., saying: "Although, therefore, this is a case of first impression,—that is to say, a case in which we have, after the Master of the Rolls, for the first time, to decide what is the proper definition of 'adjacent lands,'—I think the Master of the Rolls has given a very happy definition of them, and one which we ought to accept." EDMUND H. BENNETT.

RECENT AMERICAN DECISIONS.

Supreme Court of Wisconsin.

NORTHROP *v.* GERMANIA FIRE INSURANCE COMPANY.

An agent may properly act for one party to a contract, although he is at the same time agent for other purposes of the other party.

An agent merely for the care and custody of property may act as agent for an insurance company in issuing a policy of insurance on the property. The two capacities are not necessarily inconsistent.

APPEAL from Fond du Lac Circuit Court. This was an action on a policy of insurance on certain buildings and machinery and fixtures therein, in Winneconne. On the trial the court nonsuited the plaintiff, and he appealed.

G. E. Sutherland, for appellant.

Cottrill & Cary, for appellee.

The opinion of the court was delivered by

LYON, J.—The testimony tended to show that the plaintiff, who resided in Ripon, owned considerable real estate in Winneconne, including the insured property, and that during several years preceding the time when such property was burned, he frequently employed one Edwards, a land agent at Winneconne, and also the general agent of the defendant company there, to collect rents and pay taxes on, and to find purchasers of portions of such real estate. Edwards was not employed by the plaintiff as his agent in respect to such real estate generally, but was employed from time to time to do specific acts in respect to specific property.

From January to about April 1st 1877, a son of the plaintiff was at Winneconne and during that time had the sole charge of the insured property as the agent of his father. In the latter part of March the plaintiff directed his son to have Edwards insure the property in the Underwriters' Agency, the same as Edwards had formerly insured it, and to give the key of one of the buildings to Edwards and have him "take charge of and see to all of the property in the building." The defendant company is a member of the Underwriters' Agency. Pursuant to the above instructions, plaintiff's son applied to Edwards to insure the property. Edwards agreed to do so and they arranged that he should retain the premium out of a larger sum in his hands collected by him for the plaintiff. Edwards stated that he was busy then but would write the policy the next day, and that in the meantime the property was insured. The son then put the property in his charge and left Winneconne.

Edwards neglected to write the policy until May 7th. A few hours after he had written it and mailed his report of the transaction to the proper office, the property was destroyed by fire.

We do not say the above facts are proved; but only that there is sufficient evidence tending to prove them, to support a special finding that they are true. The nonsuit was granted on the sole ground that the uncontradicted evidence proved Edwards to have been the agent of the plaintiff when he wrote the policy. Because he was such agent the court was of the opinion that he had no authority to

write the policy, and hence, that the same does not bind the defendant company.

Under the testimony the jury might properly have found that Edwards had no control of the property except to watch over it and guard it against destruction or injury. For the purposes of this appeal we must assume that he had no other power over it. Unless it can be held, therefore, that the mere watchman or guard of the property of another, who happens at the same time to be an insurance agent, is thereby incapacitated to write a valid policy on the property at the request of the owner, this judgment cannot be sustained. We are aware of no case in which it has been so held; certainly none was cited on the argument; and we are cognisant of no rule of law which incapacitates an insurance agent thus intrusted with the care of property, to write a valid policy upon it. Indeed, it was well said in argument that presumably it is for the interest of the insurance company taking the risk that the insured property be watched and guarded by its own chosen agent.

We conclude, therefore, that the nonsuit cannot be supported on the ground upon which the court granted it. We are also of the opinion that no other fact fatal to a recovery on the policy is incontrovertibly proved. As the action must be again tried, we purposely abstain from commenting upon other questions which were very ably argued by counsel, lest we might inadvertently prejudice one party or the other on the trial. It is deemed advisable to go no farther on this appeal than the present exigencies of the case require us to go, leaving to both parties a clear field for future contest.

Judgment reversed and cause remanded for a new trial.

TAYLOR, J., took no part in the decision.

It is a rule well settled both upon principle and authority that no agent will ever be allowed to take upon himself incompatible duties and characters, or to act in a transaction where he has an adverse interest or employment. It is also laid down as a general principle that the same individual cannot, without their knowledge and consent, be the agent of both parties in the same transaction: *Hinckley* v. *Arey*, 27 Me. 362, where it was held that, in making a contract for the composition of a debt, the same man could not represent both parties. So, in *Greenwood* v. *Spring*, 54 Barb. 375, it was held that a person sustaining the relation of agent to both parties could not execute a mortgage as the attorney of one for the benefit of the other. So, one cannot act as agent for both seller and purchaser, and recover compensation from both, unless both know of and assent to his undertaking such agency and receiving commission from both: *Meyer* v. *Hanchett*, 39 Wis. 419; s. c. 43 Id. 246; *Watkins* v. *Coresall*, 1 E. D. Smith 65;

Vanderpoel v. *Kearns*, 2 Id. 170; *Everhart* v. *Searle*, 71 Penn. St. 256; *Bennett* v. *Kidder*, 5 Daly 512; *Lloyd* v. *Colston*, 5 Bush. 587. The rule is the same where an exchange of property is effected by a broker: *Pugsley* v. *Murray*, 4 E. D. Smith 245; *Farnsworth* v. *Hemmer*, 1 Allen 494; *Walker* v. *Osgood*, 98 Mass. 348; *Rice* v. *Wood*, 113 Id. 133; *Raisin* v. *Clark*, 41 Md. 158; *Meyer* v. *Hanchett*, *supra*; *Lynch* v. *Fallon*, 11 R. I. 311.

Where, however, each owner, with the knowledge that the broker was employed by both, promises to pay him a commission, such promise may be enforced: *Pugsley* v. *Murray*, *supra*; *Rowe* v. *Stevens*, 53 N. Y. 621; *Alexander* v. *N. W. Ch. University*, 57 Ind. 466. And when a middleman brings together a buyer and seller, each of whom has agreed, without the knowledge of the other, to pay the middleman a commission on any contract which may be made between them, in the making of which the middleman takes no part as agent for either, it is held, that the conduct of the middleman in concealing from each his agreement with the other, is not fraudulent, and is no defence to an action brought by him against either for the commission agreed upon: *Rupp* v. *Sampson*, 16 Gray 398; *Siegel* v. *Gould*, 7 Lans. 177; *Mullen* v. *Keetzleb*, 7 Bush 253.

The contract, however, in a case where the same person has improperly acted as the agent of both parties in the same transaction, is voidable only, at the election of the principal upon timely application to the court, and is not absolutely void: *Greenwood* v. *Spring*, *supra*. It is at the option of the principal to avoid or ratify the contract irrespective of any proof of actual fraud; he is not bound to show that any improper advantage has been taken over him: *Greenwood* v. *Spring*, *supra*. And while a person cannot properly be the agent of both parties, buyer and seller, yet, if he accepts the position of agent for the buyer without disclosing the fact that he is agent for the seller, he cannot afterwards repudiate such position to shield himself from liability to the buyer, on the ground that he was agent for the seller. Having assumed the relation of agent for the buyer, he must be held to a strict performance of the duties, and to all the liabilities the relation imposes: *Cotton* v. *Holliday*, 59 Ill. 176. See also, *Bower* v. *Johnson*, 28 La. Ann. 9.

The rule that the same individual cannot be the agent of both parties, seems properly to be limited to cases where the agency relates to the same transaction, or involves incompatible duties. And with relation to both of these cases, the knowledge and consent of both parties that the agent should act for both, will remove the objection.

In *Hinckley* v. *Arey*, it was held that when the composition had been agreed upon with the creditor by the agent of the debtor, he could become the agent of the creditor for another and distinct purpose, such as holding the money for the use of the creditor.

In *Sumner* v. *The Charlotte, C. & A. Railroad Co.*, 78 N. C. 289, it is said that the law does not favor double agencies. It appearing, therefore, in that case, which was an action for damages against the railroad company, that the plaintiff had employed one C., who was a depot agent of the defendant, to purchase cotton for him and to hold and ship it under his directions, it was held, that C., in so dealing in cotton for the plaintiff, acted solely as the plaintiff's agent, and there was no liability on the part of the defendant for any loss resulting from C.'s failure to perform his duties as such agent.

In *Adams Mining Co.* v. *Senter*, 26 Mich. 73, and *Colwell* v. *Keystone Iron Co.*, 36 Id. 51, the rule is laid down more accurately, that there is no principle of law which precludes a person from acting as agent for two principals. In the former case, CAMPBELL, J., referring to the

claim that the double agency in the case (the same person being the agent of the two mines in the same vicinity) involved a conflict of duties, and that all of the agent's dealings, whereby the property of one company was transferred to, or used for the other, should be held unlawful, said: "There is no validity in such a proposition. The authority of agents may, when no law is violated, be as large as their employers choose to make it. There are multitudes of cases where the same person acts under power from different principals in their mutual transactions. Every partnership involves such double relations. Every survey of boundaries by a surveyor jointly agreed upon would come within similar difficulties. It is only where the agent has personal interests conflicting with those of his principal, that the law requires peculiar safeguards against his acts. There can be no presumption that the agent of two parties will deal unfairly with either. And when they both deliberately put him in charge of their separate concerns, and there is any likelihood that he may have to deal with the rights of both in the same transactions, instead of lessening his powers, it may become necessary to enlarge them far enough to dispense with such formalities as one man would use with another, but which could not be possible for a single man to go through with alone."

In *Colwell* v. *Keystone Iron Co.*, *supra*, it was held competent for a person in the general employ of the vendor, to accept, by the consent of all parties, as agent of the vendee, the delivery of the property sold.

In *Helmer* v. *Krolick*, 36 Mich. 371, the fact that the purchaser of negotiable paper, resident in a distant part of the state, employed to collect the same a person who was also an agent for the payee, was not considered very significant, as indicating want of good faith in the purchase.

Tested by the foregoing considerations the ruling in the principal case seems entirely correct and satisfactory.

MARSHALL D. EWELL.

Chicago, March 18th 1880.

United States Circuit Court, District of Colorado.

STEVENS *v.* WILLIAMS ET AL.

A vein, lode or ledge, within the meaning of the Act of Congress, is a mineral body of rock within defined boundaries in the general mass of the mountain.

The top or apex of a vein, is the highest point where it approaches nearest to the surface of the earth, and where it is broken on its edge, so as to appear to be the beginning or end of the vein.

If a vein at its highest point, turns over and pursues its course downwards, then such point is merely a swell in the mineral matter, and not a true apex.

Where there is a true apex within the surface boundaries of a claim, the claimant can follow the vein in its downward dip beyond his vertical side lines.

And he may follow the vein beyond such side lines at any point where the apex is within his surface lines, even though his location, for the full length of the claim, be not along the line of such apex.

And he is entitled to follow the same in its departure from the perpendicular in any degree until it reaches the horizontal.

CHARGE by MILLER, Circuit Judge.

Gentlemen of the jury: After a very long and patient investiga-